

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :
: 16-CV-5044 (VEC)
: 88-CR-325-2 (VEC)
-against- :
: ORDER
:
NELSON VARGAS, :
: Defendant. :
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VALERIE CAPRONI, United States District Judge:

WHEREAS Mr. Nelson Vargas filed a petition pursuant to 28 U.S. Code § 2255, arguing that his 1991 sentence should be vacated because the definition of “crime of violence” under the career offender Sentencing Guideline, U.S.S.G. §§ 4B1.1, 4B1.2, which was mandatory at the time of his sentence, contains an unconstitutionally vague residual clause, *see* No. 16-CV-5044, Dkt. 11;

WHEREAS the petition was filed within one year of the Supreme Court’s decision declaring an identical, statutory residual clause unconstitutionally vague, *see Johnson v. United States*, 135 S. Ct. 2551 (2015);

WHEREAS the Second Circuit held that a § 2255 petition seeking to vacate a mandatory Guidelines sentence under *Johnson* was untimely filed, despite being commenced within one year of *Johnson*, *see Nunez v. United States*, No. 18-1803, 2020 WL 1501937 (2d Cir. Mar. 30, 2020);

WHEREAS on April 15, 2020, the Court ordered Defendant to file a letter by April 28, 2020 explaining whether there was any reason why Mr. Vargas’ petition should not be withdrawn or summarily dismissed in light of the Second Circuit’s decision in *Nunez*, *see* No. 16-CV-5044, Dkt. 19;

WHEREAS on April 20, 2020, the Court granted Defendant's request for an adjournment of the deadline until 21 days after the resolution of a rehearing petition filed in *Nunez*, see No. 16-CV-5044, Dkt. 21;

WHEREAS on July 1, 2020, Defense counsel updated the Court that the Second Circuit had denied rehearing the petition in *Nunez*, see No. 16-CV-5044, Dkt. 22;

WHEREAS on July 1, 2020, the Court granted Defendant's request for an adjournment of the deadline until after the resolution of the petition for a writ of certiorari in *Nunez*, Dkt. 23;

WHEREAS on December 7, 2020, the Supreme Court denied the petition for writ of certiorari in *Nunez*, see *Nunez v. United States*, 141 S. Ct. 941 (2020); and

WHEREAS on December 8, 2020, Mr. Vargas was released from incarceration;

IT IS HEREBY ORDERED that Mr. Vargas must file a letter, by no later than **Friday, May 14, 2021**, explaining whether there is any reason why his petition should not be withdrawn or summarily dismissed in light of the Second Circuit's decision in *Nunez*. If necessary, the Government must file a response by **May 28, 2021**.

SO ORDERED.

Dated: May 4, 2021
New York, NY



VALERIE CAPRONI
United States District Judge